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1

I N D E X

2

April 19, 2010

3

Page

4

Appearances

1

5

Hearing

3

6

Court Reporter's Certificate

51

7

8

9

10

11

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1 LAW CLERK: All rise.

2 THE COURT: Please be seated.

3 We've got some discovery motions set in IP &
4 Company, LLC, against Oncor Electric Delivery Company
5 and others, 2:09-CV-37.

6 What says the plaintiff?

7 MR. WARD: Johnny Ward and Ryan Walsh for
8 the plaintiff, Your Honor.

9 THE COURT: Y'all are ready to proceed?

10 MR. WALSH: Yes -- yes, Your Honor.

11 MR. GARDNER: Good afternoon, Your Honor,
12 Allen Gardner here with Lisa Kobialka, and we're ready
13 to proceed, sir.

14 THE COURT: All right.

15 MR. GARDNER: Also, I wanted the Court to be
16 aware that Sensus is a defendant in this case, and they
17 don't have a -- they don't have a dispute here so
18 they're not here, but they just wanted us to let the
19 Court know that's why they're not here.

20 THE COURT: Okay. All right. Well, I'll
21 try not to get them involved in a dispute that they're
22 not involved in, okay?

23 MR. GARDNER: Yes, sir.

24 THE COURT: I think you've got the first
25 motion, so let's hear it. How much time do you need?

1 MR. WALSH: Maybe 15 minutes, Your Honor.

2 THE COURT: I'll give each side 20 minutes
3 to argue. Can you consolidate the arguments, you think,
4 on both motions --

5 MR. WALSH: Yes, Your Honor.

6 THE COURT: -- in that time period? Okay.

7 MR. WALSH: Yes, Your Honor. Again, my name
8 is Ryan Walsh, and I'm here with the firm of Robbins,
9 Geller, Rudman & Dowd on behalf of the plaintiff, IP Co,
10 LLC, which is a D -- has a DBA of Intus IQ, and they're
11 the plaintiff in this case, and we're here on their
12 motion to compel defendant's, Trilliant Networks,
13 documents and information from defendant Trilliant.

14 First, I just want to thank you, Your Honor,
15 for allowing us to be heard this morning -- or this
16 afternoon, rather. The motion -- Intus' motion really
17 places two concise issues before the Court.

18 The first is can Trilliant limit discovery
19 to only products that are specifically identified by
20 product brand name in the infringement contentions that
21 Intus IQ has served in this case?

22 And the second is whether Trilliant has
23 satisfied its obligations under Local Rule --

24 THE COURT: Has the source code been
25 produced?

1 MR. WALSH: It has.

2 THE COURT: Have y'all looked -- have y'all
3 looked at that?

4 MR. WALSH: We have not looked at the source
5 code yet, Your Honor.

6 THE COURT: Okay. When was it produced?

7 MR. WALSH: They -- we were informed in --
8 in -- I think, on December 16th that they were willing
9 to make that available after -- that was four months
10 after they were supposed to have made it available, but
11 they told us in December that they would make it
12 available. And in late December, they said at a date
13 and time to be determined, they would make it
14 available.

15 THE COURT: Okay. And what has happened
16 since that time?

17 MR. WALSH: Since then, we -- we have not
18 reviewed the source code because we don't think that
19 they've made all of it available. They've only -- to
20 our understanding, they're only willing to make it
21 available for the three products that we specifically
22 identified by product name.

23 And rather than go and review it twice and
24 expend -- because, in essence, we have our expert fly
25 out to inspect the code, and so rather than do that

1 twice, we wanted to wait and get this issue resolved and
2 then review the source code one time.

3 THE COURT: All right.

4 MR. WALSH: And, Your Honor, that sort of
5 brings me to my first point. In reviewing the reply
6 brief that -- that was filed by Trilliant in this case,
7 they represented for the first time that they had
8 produced documents and information regarding all the
9 products that had been identified by IP Co in the case
10 and all reasonably-related mesh networking products.

11 And we were surprised to see that, Your
12 Honor, because, frankly, that's what we thought we
13 were -- we were fighting about. They had consistently
14 represented prior to that point, again, that they were
15 only going to produce documents and information
16 regarding the products that had been specifically
17 identified by product brand name.

18 And so I -- it -- it begs the question,
19 though, I suppose, as to exactly what they mean by
20 identified by IP Co because -- and -- and, again, in the
21 infringement contentions, IP Co has identified a number
22 of products as accused products, three of them by brand
23 name. And we believe all should be subject to
24 discovery.

25 And in their -- in their discovery

1 responses, interrogatory responses, they have not -- the
2 only three products that they have responded -- we asked
3 them to identify all the products --

4 THE COURT: That was my next question is
5 have you got a list of the products that manu -- that
6 are manufactured by Trilliant that operate on the mesh
7 network that they have identified?

8 MR. WALSH: They -- they have only -- they
9 have only confirmed the three products that we've
10 identified by name, and so we have an interrogatory
11 that's pending, and they still have only listed those
12 three products, Your Honor.

13 So in short, what we're seeking here with
14 this motion is an order compelling the production of
15 responsive documents and information regarding
16 Trilliant's SecureMesh Network, including all the
17 devices and components that operate on that network, as
18 well as any wireless networks that are reasonably
19 similar.

20 And then, secondly, an order compelling the
21 full 3-4(a) production regarding the SecureMesh Network
22 and any reasonably similar networks.

23 And -- and really everything is tied to the
24 initial issue, Your Honor, which is the proper scope of
25 discovery in this case.

1 Now, I do -- I'm willing to provide -- I'm
2 certainly willing to provide some background if it
3 would be helpful to Your Honor regarding this case and
4 the technology that is at issue. If -- if you don't
5 feel that would be helpful, I'm happy to jump right into
6 it.

7 THE COURT: I mean, I've read your papers --

8 MR. WALSH: Okay.

9 THE COURT: -- and I've read your
10 contentions --

11 MR. WALSH: Okay.

12 THE COURT: -- or at least a good portion of
13 them, so I think I've --

14 MR. WALSH: Well, I -- I think the one --
15 just by way of background, the -- just to be clear,
16 the -- the Trilliant SecureMesh Network is the network
17 that was accused. The infringement contentions, they
18 specifically identify as accused instrumentalities the
19 SecureMesh Network and devices operating thereon,
20 including without limitation the SecureMesh Gateways,
21 SecureMesh Devices, including without limitation utility
22 meters, programmable communicating thermostats, and so
23 on.

24 It -- it specifically lists a number of
25 products, including some products by -- by product brand

1 name. When the -- when Trilliant initially served its
2 responses to our discovery, they made it clear that they
3 would not produce any source code and that they would
4 not produce any information regarding any products that
5 we had not identified by product brand name.

6 The latter they have maintained up and until
7 the filing of the motion. The second they did agree to
8 produce at least some source code immediately before the
9 motion.

10 Just with respect to --

11 THE COURT: What source code have they
12 agreed to produce?

13 MR. WALSH: They have not clarified that,
14 Your Honor, but we -- we presume that it's -- it's
15 regarding the three products that we've listed by
16 product brand name.

17 The -- just with respect to the Rule 3-4(a)
18 motion -- the order regarding compelling documents
19 regarding Rule 3-4(a), again, if -- if -- if they will
20 agree to produce 3-4(a) documents regarding all the
21 products we've identified and all reasonably similar
22 products, then I don't think we have an issue there.
23 But, again, it -- I think it goes back to the original
24 question as to exactly what products we've identified.

25 And, again, they've maintained that we've

1 only identified three products by brand name, and so
2 those are the only products that are properly subject to
3 discovery. And -- and that's really the primary issue
4 that's before the Court on our motion.

5 We believe we're entitled to discovery on
6 all the accused instrumentalities that we've listed, as
7 well as any reasonably similar products.

8 The argument that we have to specifically
9 identify products by brand name fails both on a factual
10 level and a legal level.

11 On a factual level, we have identified the
12 network by brand name as the SecureMesh Network.

13 THE COURT: Let me --

14 MR. WALSH: Yes.

15 THE COURT: -- interrupt you. By products
16 that are reasonably similar, I under -- I mean, that's
17 easy to say, but it's a little bit more difficult for me
18 to get my hands around. Are you talking about products
19 that they might manufacture that use the same link
20 quality indicator that you've identified in your
21 contentions?

22 MR. WALSH: Your Honor, I think we're --
23 we're talking about two different levels, really. I
24 mean, there -- there's the SecureMesh Network, and then
25 we've identified certain devices that operate on that

1 network.

2 THE COURT: Right.

3 MR. WALSH: So we believe we're entitled
4 to -- to discovery on those devices that we've
5 identified, as well as any reasonably similar devices
6 that might also operate on the SecureMesh Network.

7 THE COURT: Okay.

8 MR. WALSH: We also believe that to the
9 extent that they offer other wireless mesh networks like
10 the SecureMesh Network, that we're entitled to discovery
11 on those networks, as well.

12 THE COURT: Okay. Okay.

13 MR. WALSH: And -- and so, again, as a
14 factual matter, we've identified the accused system by
15 name, we've identified products by name, at least to
16 some -- certain extent some -- some on a generic level,
17 but we've used the exact same terminology that they've
18 used in their marketing materials.

19 So to -- to the extent that they argue they
20 don't know what we're talk -- talking about, we believe
21 that's difficult to believe.

22 On a legal level, quite frankly, there's --
23 there's simply no support in the case law to limit
24 discovery to devices that are specifically identified by
25 brand -- product brand name. We asked them for it. We

1 couldn't find it ourselves. They haven't provided it to
2 us. We don't believe it exists.

3 And, in fact, to even go a step further, as
4 Your Honor is aware, Courts in this district have
5 allowed discovery on products that aren't even listed in
6 the -- in the infringement contentions, as long as
7 they're reasonably similar and the plaintiff has
8 provided a specific theory of infringement and the
9 products operate in a manner reasonably similar to
10 that theory. And I think that's the issue that we were
11 just -- were just getting to.

12 As a practical matter, we have identified
13 a -- we've identified -- we've provided two specific
14 concise theories of infringement. One is the local area
15 network, or I think Trilliant generally refers to it as
16 a neighborhood area network level which is where you --
17 you have a mesh network in a gateway. The mesh network
18 is the meters and so on.

19 The other is the home area network where you
20 have a micro access portal in devices in the home.

21 THE COURT: ZigBee-type?

22 MR. WALSH: Exactly. Yes, Your Honor.

23 So the -- the -- Trilliant has, in essence,
24 offered a few arguments as to -- to why they should not
25 have to produce documents regarding these products we

1 haven't identified by product brand name. Their --
2 their first few arguments, though, are -- are, in
3 essence, more generic than that. I mean, first they
4 argue that our -- our motion was premature. And -- and
5 to be clear, that's not the case. We spent -- I think
6 we sent our first deficiency letter in early October,
7 and we waited until mid-January before we filed our
8 motion.

9 In that time -- and, frankly, in their last
10 correspondence at the end of December, they made it very
11 clear that they were not going to produce any -- any
12 information or documents regarding any products that we
13 hadn't mentioned by brand name, the three products.

14 They made it clear in that December 28th
15 letter that they had actually completed their Rule
16 3-4(a) production in September, even though they had
17 produced no source code at that time and they hadn't
18 produced a single document that was labeled even
19 confidential under the protective order.

20 We asked them for many -- many times at that
21 point what had been withheld and what had been produced,
22 and they -- they wouldn't tell us.

23 In the motion, they also asked us why we
24 hadn't reviewed the source code, and -- and at the time,
25 when they -- when they did that, they -- they pointed

1 out that -- that according to them, the source code was
2 the most important -- the most important source of
3 information regarding the operation of the accused
4 products. But for the four months immediately preceding
5 that, they had refused to produce it and claimed it was
6 irrelevant.

7 And, again, at this time, we haven't
8 reviewed it because we're waiting for the outcome of
9 this order so we can do it all at once.

10 But the second argument they made is that
11 it's defective. We don't believe it's defective. We
12 pointed out that the -- actual discovery requests
13 interrogatories that are at issue.

14 And, finally, they claim that we're seeking
15 discovery on every product in the country -- I mean,
16 company. That's, again, simply not true. We simply
17 seek discovery on the SecureMesh Network and the
18 products that operate thereon.

19 The -- the argument that they've set up,
20 they've also mentioned the CellReader product, Your
21 Honor. As you saw in the papers, again, the -- the
22 CellReader product, I think, fits under the reasonably
23 similar area, and we -- frankly, we -- we don't know if
24 it's reasonably similar or not. We haven't -- we don't
25 have enough information at this point to determine that

1 one way or another. But we did offer a compromise to
2 try to resolve that, and -- and they did not take us up
3 on our compromise.

4 Finally, Your Honor, they -- they have
5 argued that their deficiencies are somehow excused
6 because our infringement contentions are deficient, and
7 that really gets at the heart of their motion.

8 They basically make two arguments, Your
9 Honor. One is that we failed to identify a theory of
10 infringement. And, second, that our infringement
11 contentions failed to identify the products that are --
12 that are at issue with any reasonable popularity -- or
13 I'm sorry, particularity. Neither of those arguments
14 really holds water, Your Honor.

15 With respect to the -- to failing to
16 identify concise theories of infringement, Trilliant
17 waited over six months to file this motion, and they
18 only did so in response on our motion to compel. During
19 that time, according to them, they made a -- a
20 sufficient and full Rule 3-4(a) production. They
21 provided responses to interrogatories, produced
22 documents.

23 So they -- they can't -- as the -- as the
24 Court has put it, they can't lay behind the log and then
25 claim that they -- they didn't have sufficient notice.

1 I think more importantly with respect to this case, the
2 parties -- they did initially raise complaints about our
3 infringement conten -- contentions I think back in
4 August of this year. And at that time, the parties went
5 through a -- a long, frankly exhaustive meet and confer
6 process with a number of letters, e-mails, and a
7 telephonic meet and confer, set up an in-person meet and
8 confer.

9 At the end of that process, they cancelled
10 the in-person meet and confer and sent us a letter. And
11 in the letter, what they specifically said was as -- as
12 we discussed in great detail during the telephonic meet
13 and confer, IP Co's preliminary infringement contentions
14 pursuant to Local Rule 3.1 identify four Trilliant
15 products by name as accused products in this case.
16 Therefore, Trilliant will only produce discovery
17 responses and documents for these specific products. If
18 IP Co disagrees and can identify by name any other
19 product that is alleged to have infringe, we'll consider
20 expanding our discovery responses and discovery
21 production.

22 At no point in that letter did they say that
23 they didn't have sufficient notice or they didn't
24 understand our -- our theories of infringement. And,
25 again, they can't lay behind the log for six months and

1 then claim that they didn't have notice.

2 More importantly, again, we have identified
3 the two concise theories of infringement, both on the
4 local area network and the home area network level.

5 And then, finally, it -- it's difficult for
6 us to understand how they can refuse to produce
7 documents for months, including source code, which is
8 obviously not publicly available, and then complain that
9 our -- that our infringement contentions lack sufficient
10 or -- or lack detail.

11 The second argument is that our infringement
12 contentions only specifically identify the -- the three
13 products by brand name. And I know their letter listed
14 four products, but they were actually -- there was a
15 micro access portal that was listed twice, and I believe
16 that's just a -- a single product.

17 Again, Your Honor, that -- that -- that
18 argument simply doesn't hold water. The '271 patent, as
19 you've seen, is a system patent. It -- it refers to the
20 system as a whole, and we've accused the SecureMesh
21 Network.

22 The '516 patent refers to a gateway between
23 two networks. And, again, we're talking about the
24 SecureMesh Network. Both patents cover technology for
25 routing information within the wireless network.

1 Again, these -- these infringement
2 contentions specifically ID -- identify where the claim
3 elements can be found in the accused systems using the
4 same terminology that they have in their -- in their
5 publicly-available marketing materials.

6 The -- again, Your Honor, this is well
7 briefed as far as the actual -- the elements of the
8 system, and so I -- I -- unless you believe it will be
9 helpful, I won't go into detail on that.

10 But -- but, again, we -- we've specifically
11 identified the devices that operate on the network with
12 the information that was publicly available to us.

13 And then I think, finally, Your Honor,
14 it's -- it's important to recognize the nature of this
15 product. This isn't a product that you can go pick up
16 at Home Depot or Lowe's. This is a system. It's a --
17 it's a complex system that -- that you can't just go
18 buy. It's usually customized to a client's needs or to
19 a customer's needs.

20 They've told us that the SecureMesh
21 Communications can be imbedded in a wide variety of
22 products, and so it's impossible for us to define every
23 manifestation of the infringement, and we've cited the
24 Orion case as an example or -- or as support for that --
25 for the theory that as long as we provide a

1 manifestation of infringement that provides notice of
2 our theory, that that is sufficient in a situation like
3 this.

4 And -- and then, finally, Your Honor,
5 their -- their motion also -- also mentioned
6 interrogatory -- I think their Interrogatory No. 1, at
7 least individual Interrogatory No. 1, and they claim
8 that our response to that interrogatory was
9 insufficient.

10 In short, that -- that interrogatory asked
11 for nothing less than for us to state the -- the full
12 legal and factual basis for our claim of infringement
13 against Trilliant. It -- it has sub -- seven subparts
14 that ask for everything from claim construction of 12 --
15 112(6) claims to all facts, theories, and materials you
16 intend to rely on at trial.

17 At this time, we've -- we've referred them
18 to our infringement contentions. We believe that the
19 infringement contentions provide the information that
20 they're requesting. And to the extent that it doesn't,
21 we believe -- or we understand once we have an
22 opportunity to review all of the technical information
23 in their source code, we will likely be in a position
24 to -- to supplement our infringement contentions, if
25 necessary, at that time. And that that may answer

1 whatever questions they have.

2 So, again, in -- in conclusion, Your Honor,
3 we believe that it's -- it's -- it's clear they can't
4 limit discovery in this case to products that have been
5 identified by brand name. With their local 3-4(a)
6 production, if they've produced everything, then they
7 should just come -- come out and say so and identify
8 the products that they've produced information
9 regarding.

10 And, third, the infringement contentions
11 that we've produced are -- are sufficient under the law.

12 If there's nothing further.

13 THE COURT: All right. Thank you.

14 MR. WALSH: Thank you, Your Honor.

15 THE COURT: You've got about three minutes
16 left.

17 MR. WALSH: Okay.

18 MS. KOBIALKA: May it please the Court.

19 Lisa Kobialka on behalf of Trilliant Networks.

20 Your Honor, I want to start with a very
21 simple principle up front. We have not taken the hard
22 line that they've described with respect to document
23 production. In fact, what we've produced -- and this
24 dates all the way back to when we did our invalidity
25 contentions -- we produced information regarding the

1 meters, the in-home displays, the remote appliance
2 controller, collectors, repeaters, thermostats, the
3 network itself, so we've not limited it to those
4 specific named products.

5 And there -- what they've done is taken a
6 dispute way out of context. Well before they even filed
7 their motion, we kept articulating, we understand your
8 contentions only so much. We understand these products
9 that you've identified, and we understand you're
10 referring to a mesh network.

11 Understand Trilliant also has cellular
12 technology, which is separate. It's not reasonably
13 similar. It's a totally different technology. If you
14 believe that that's somehow at issue and that should be
15 part of the scope of discovery, then let's talk about it
16 now because Trilliant is a very small company with very
17 limited resources, and to go out and collect all of the
18 information relating to everything is incredibly
19 burdensome and incredibly expensive for a company.

20 THE COURT: Okay. Let me stop you there.
21 Have you told them -- well --

22 MS. KOBIALKA: I can --

23 THE COURT: Well, hold on a second. Have
24 you identified the products for them that operate on the
25 SecureMesh Network that Trilliant makes?

1 MS. KOBIALKA: Yes.

2 THE COURT: Okay. And you've provided a
3 list of those to them?

4 MS. KOBIALKA: They have our product lists.
5 They -- they have our technical specifications. Yes --

6 THE COURT: But those have been --

7 MS. KOBIALKA: -- they have all of it.

8 THE COURT: -- but those have been
9 identified as the products that operate on the -- your
10 client makes that operate on the SecureMesh Network?

11 MS. KOBIALKA: Yes.

12 THE COURT: Okay. What other networks or
13 network, other than SecureMesh, does Trilliant make?

14 MS. KOBIALKA: There's no other mesh network
15 that Trilliant makes.

16 THE COURT: Okay. What other networks do
17 they make?

18 MS. KOBIALKA: They have a cellular-based
19 technology. I wouldn't necessarily characterize it as a
20 network, but reasonable minds can differ on this. It
21 utilizes cellular technology which is basically just
22 talking back and forth from a phone to another unit
23 and -- and back. That's it. It can provide information
24 over cell lines.

25 THE COURT: Okay. And does that -- do

1 products that operate on -- in your cellular-based
2 network, do they also operate on the SecureMesh Network?

3 MS. KOBIALKA: To the extent they have,
4 they've been produced, but --

5 THE COURT: But -- but --

6 MS. KOBIALKA: The -- the answer is, I don't
7 believe they actually work, but there has been some
8 marketing materials that indicate that CellReader may
9 have been offered for sale as a potential -- not that
10 they actually had it, but there is the potential to add
11 on the CellReader product.

12 THE COURT: And is that the product that
13 y'all were taking the position that y'all ought to
14 only -- if you had to produce anything, produce sales
15 data instead of technical data for that product?

16 MS. KOBIALKA: No. We were talking about
17 the cellular technology. We -- we produced the
18 information about CellReader to the extent it had to do
19 with the mesh network.

20 THE COURT: Okay.

21 MS. KOBIALKA: And -- and to be clear, we --
22 we told them that's what we were doing in the December
23 28th letter, so this is well before they filed their
24 motion. We said, we'll produce documents relating to
25 the products they've identified, as well as any

1 reasonably related documents, i.e., any documents that
2 refer or relate to the four named accused
3 instrumentalities.

4 And -- and I can give you a listing of
5 everything that we have produced in this case in terms
6 of technical documentation, among other things.

7 THE COURT: Okay. That's -- go ahead. I've
8 cut you off. I've just got questions that I --

9 MS. KOBIALKA: That's fair.

10 We -- we provided an engineering
11 specification which sets forth how the Trilliant mesh
12 layer works, so it goes directly to how the network
13 works in and of itself. That's been provided. All
14 product descriptions, product lists, data sheets,
15 technical specifications, electrical certification tests
16 were provided, engineering documents for how the network
17 communicates. We provided product manuals. We provided
18 RFPs, so any RFPs that they had submitted that is not
19 under a confidentiality agreement, we were able to
20 produce. We produced all of our pilot program
21 documentation.

22 Trilliant, as it stands, has not actually
23 been able to sell this product. There's no utility out
24 there that has said, okay, we're going to go for a full
25 implementation. They have a handful of pilot programs

1 with different utilities throughout the United States.

2 And so those agreements have all been
3 produced and all the company documentation and source
4 code for all of those products have been produced.
5 We -- we said, you can have that source code.

6 Our dispute about source code has been
7 mischaracterized, and I'd like to elaborate on that
8 specifically. The source code that we said we would not
9 provide has to do with aggregation software, whereby
10 Trilliant for the utilities collects the electricity
11 usage and aggregates that information for the utility's
12 purposes.

13 That particular software program really has
14 nothing to do with how the network in and of itself
15 works. We said, we'll provide you with the information
16 about how that -- what that program is about, and we
17 did. We produced all of the documentation that we have
18 about that program, but to go and provide that source
19 code was unnecessary, frankly wasn't helpful, and it's
20 really not relevant to the issues in dispute, but we
21 said, look, if you want to tell us how that particular
22 source code is relevant, let us know.

23 As far as source code goes under the
24 protective order, they are supposed to come to counsel's
25 offices and review them, and we've told them it -- it's

1 available. You can -- you can review it.

2 This -- this whole issue seems to stem
3 around -- they keep saying you haven't produced
4 anything. We keep asking, what is it that you think
5 we're not producing?

6 THE COURT: Well, it's -- the reason I asked
7 my last question about the CellReader documents is
8 because in Footnote 4 to your response, you said that
9 although IP Co's claims to seek discovery on CellReader
10 under the convoyed sales damages theory, IP Co fails to
11 explain why it seeks technical documents only relevant
12 to an infringement claim, rather than the sales
13 documents that would be relevant to convoyed sales
14 theory.

15 So have you produced the technical documents
16 or have -- have you not?

17 MS. KOBIALKA: We've produced all of the
18 technical documents as related to the mesh network, yes.

19 THE COURT: Okay. But you are not going
20 to --

21 MS. KOBIALKA: We have not -- not --

22 THE COURT: -- produce them on the
23 CellReader?

24 MS. KOBIALKA: That's correct.

25 THE COURT: Okay. Are you stipulating that

1 the CellReader products operate as a -- functionally
2 with the SecureMesh Network --

3 MS. KOBIALKA: I --

4 THE COURT: -- as is required for them to
5 show their convoyed sales --

6 MS. KOBIALKA: No.

7 THE COURT: -- argument?

8 MS. KOBIALKA: I -- I don't believe that
9 it's actually ever been sold as part of the -- the pilot
10 programs that they have or part of the -- the offerings.
11 I think it was sort of pie-in-the-sky hopes, and that
12 was what Trilliant had sold previously, that they were
13 going to be able to, you know, build off of their
14 CellReader and -- and their cellular networks that they
15 had sold previously when they entered into this sort of
16 new area which now has gotten to be known as Smart Grid
17 technology.

18 THE COURT: Okay. Okay. All right. Well,
19 that may be one reason they need technical documents is
20 what I'm telling you is to assess the -- how
21 functionally related or unrelated it is to the
22 SecureMesh Network.

23 MS. KOBIALKA: And -- and we've told them,
24 look, this is -- we've given them information. We've
25 shown them publicly available information, as well.

1 They have it in the production. We provided -- we did
2 not -- put it this way, we did not go out and exclude
3 CellReader. If it was discussed within the mesh
4 network, we went ahead and produced it.

5 And -- and the whole purpose for -- for
6 doing this up front was to ensure that when we went out
7 and did our word search for all documents, and this
8 included getting documents from multiple locations, that
9 we were being as broad as possible. So we tried to
10 capture absolutely everything that was covered for the
11 word "mesh," everything that was covered for the word
12 "route," anything that had to do with the Servicom
13 software so they can get a description and understanding
14 of what that information is, as well as the specific
15 products they identified and the products that we
16 thought were reasonably related to the -- the mesh
17 network itself.

18 So we went out, we -- we collected all of
19 that. We had hoped that we could really resolve this
20 dispute before we got into any of it, and that was
21 really where the -- this -- how we got into the
22 invalidity contention -- or the infringement contentions
23 issues was through a description of products.

24 But we have not limited our production in
25 the way that they have described, and we really have not

1 taken this hard line that they keep saying. In fact, we
2 were broader than providing what would be reasonably
3 similar. We went to anything that was reasonably
4 related or referred to the mesh network, and we keep
5 asking them if there's something you think that's
6 missing, please let us know, but don't turn around and
7 just say, you haven't produced everything, without
8 telling what -- what it is.

9 We're -- we're reasonable. If you tell us
10 if it's reasonably related to this, we're going to go
11 ahead and provide it.

12 THE COURT: Tell me again what source code
13 you've offered to make available.

14 MS. KOBIALKA: So all of the -- the source
15 code for the products that I had identified to the
16 extent there's any source code for the actual mesh
17 network itself, they can have that, what's on the
18 gateways, what's on -- to the extent there's any in
19 the -- the meters that work on the mesh network or any
20 of the in-home displays that would work on the mesh
21 network.

22 THE COURT: But you've -- you've offered
23 source code, then, for all of the products that your
24 client makes that operate on the SecureMesh Network?

25 MS. KOBIALKA: Yes, yes.

1 THE COURT: Okay. Okay. Go ahead.

2 MS. KOBIALKA: The -- the -- what we're --
3 we're dealt with now is -- and I believe really what the
4 dispute is is whether or not the cellular technology is
5 at issue, and this was something that, frankly, I raised
6 from -- from day one.

7 After we received their preliminary
8 infringement contentions, we wrote to them within a week
9 and a half and said, we need to sit down and talk. We
10 don't think they're sufficient. What you've described
11 here is really broad. It's vague, and we want to
12 understand it better.

13 No less than five times before we served our
14 invalidity contentions, recognizing that the scope of
15 what's accused could affect what invalidity is involved,
16 particularly if they're accusing cellular technology as
17 being part of the accused products, but we met and
18 conferred with them no less than five times, including a
19 pretty lengthy call-in, which I had a discussion with
20 lead trial counsel for IP Co explaining to them these
21 very issues, which is that there is cellular technology
22 and then there's this mesh technology.

23 And they said, anything that runs on a
24 network is what's at issue. We said, that's too broad.
25 That cannot be what's at issue here, and we've

1 subsequently tried to resolve it.

2 At one point, when a different party was
3 scheduled to do a meet and confer regarding the
4 infringement contentions, we had looked into whether or
5 not we could attend that particular meeting. We were
6 unable to attend that meeting, so this big deal about we
7 supposedly canceled the meeting is not accurate.

8 We continued to meet and confer with them in
9 good faith, and I'm sure you've seen just the -- the
10 tons of correspondence with regard to the meet and
11 confer efforts that were done before we had the
12 in-person meet and confer in December. And we kept
13 telling them, this is what we're going to produce,
14 despite the fact we really don't understand what's at
15 issue.

16 We also served this interrogatory to try and
17 help us understand what your theories are because we
18 still don't believe you've explained to us how these
19 particular products infringe.

20 At this point, they've had our
21 documentation -- all of our technical documentation.
22 They've had access to our source code, and they should
23 be able to respond to it, whether it's in the
24 infringement contentions or whether it's specifically in
25 the interrogatories.

1 But we -- we don't want to have Trilliant
2 have to bear the burden of going through, collecting all
3 of its information with regard to its cellular
4 technology which dates back a fair number of years
5 without some specificity about what it is that they're
6 looking for.

7 And we tried to do a pull. We found it's
8 about 1.5 -- close to 1.5 of terabytes of information
9 that would be out there. And just to upload it alone
10 for processing, even before attorney review, would be
11 about a hundred thousand dollars. And I actually got a
12 declaration from a vendor, if the Court is, you know,
13 interested in seeing it all, but that's a lot of money
14 to Trilliant, particularly when it really doesn't have
15 any significant sales of any note here in the -- in the
16 U.S.

17 And so it -- it was just something that we
18 could not agree to just go ahead and provide. And
19 there's really no explanation why that technology would
20 have anything to do with the network system of the '271
21 patent or the gateway between the '516 patent, which it
22 had absolutely nothing to do with the gateway itself.

23 So, Your Honor, at this point, we're --
24 we're asking for them to at least provide us, whether
25 it's in the infringement contentions or in the

1 interrogatory which we have propounded on them, to give
2 us the specifics on what their infringement theories are
3 to make sure that we've covered the universe of prior
4 art, as well as the issues that -- that are potentially
5 involved in this case.

6 There's only one RFP that I believe is still
7 in dispute, and that is RFP No. 18 where they asked for
8 CVs or resumes of anyone who ever contributed in any way
9 to the SecureMesh or the -- the mesh technology that
10 Trilliant has. And that is such a broad particular
11 request. I'm not really sure why that would be
12 appropriate. We've identified the specific individuals
13 in our interrogatories who are most knowledgeable about
14 the aspects of our mesh network technology, including
15 source code, so on the programming side, as well as the
16 networking side.

17 And so I believe that's the only RFP that is
18 really at issue here because that could be possibly -- I
19 mean, there's so many people that have potentially
20 contributed in some way or some form to the mesh
21 network, and so that's so open-ended and was
22 problematic, but with respect to all the other --

23 THE COURT: Well, how -- how many people is
24 it?

25 MS. KOBIALKA: Well, in the -- the history

1 of the company for -- for mesh networking in any of
2 those products?

3 THE COURT: I mean, their CVs, right? I
4 mean --

5 MS. KOBIALKA: Yeah -- well, I mean, we'd
6 have to go back and take a look. There's been a huge
7 turnover at the company, and it could be 50 to a hundred
8 people over time to the extent we --

9 THE COURT: A hundred pages of CV? I mean,
10 see, this is my point. I mean, that's really not an
11 unreasonable request, I mean, to me. It's -- you know,
12 tell us about the folks who were involved in -- in
13 manufacturing this.

14 MS. KOBIALKA: Well, that -- I don't know
15 that that was their request. I thought it was
16 contributed in any way whatsoever to the -- the mesh
17 network.

18 THE COURT: Well, but, you know, as opposed
19 to y'all's position, it's we're going to give you the
20 people who we think are most knowledgeable about it.
21 They're entitled, I think, to know the people who
22 contributed to -- to the mesh network. And I -- you
23 know, I think if you sat them down and asked them in a
24 deposition, they'd be required to respond to that
25 question. I mean, discovery is pretty broad.

1 MS. KOBIALKA: It -- but if it's limited to
2 just the technical aspects of it, that's one thing.

3 THE COURT: Well --

4 MS. KOBIALKA: I mean, there's -- there's a
5 lot of people that conceivably at this company and over
6 time would have contributed to the mesh network. And --
7 and so it's not as easy as you might think, given that
8 there's been almost a complete turnover at the company
9 just within the last year or so.

10 So we've done the best that we can to
11 identify all the people that would have relevant
12 information. We did that in our initial disclosures up
13 front. And if we had to provide those CVs, we could do
14 so, to the extent that they have all of that.

15 Other than, that's the only thing that's --
16 that's even at issue at this point. But we've told them
17 that we're producing all documents in response to their
18 discovery requests. They keep asking us what we're
19 withholding. We keep telling them we're not withholding
20 anything. We are producing documents in response to
21 your requests.

22 THE COURT: Okay. But your representation
23 to me, though, on -- back on the primary issue is that
24 other than the SecureMesh Network -- well, other than
25 this cellular-based technology, you've produced or

1 offered to produce all of the source code related to the
2 SecureMesh Network and any products that operate
3 thereon; is that right?

4 MS. KOBIALKA: Right. Right. And I'm being
5 more -- the mesh network, right? SecureMesh is sort
6 of -- it's a marketing name, but whatever mesh
7 technology --

8 THE COURT: Right.

9 MS. KOBIALKA: -- that they have, yes,
10 we've -- we've offered that.

11 THE COURT: Okay. And so the dispute
12 essentially boils down to whether or not I think that
13 this CellReader technology is technology that's
14 reasonably similar to the SecureMesh or the mesh network
15 technology?

16 MS. KOBIALKA: Well, I think it boils down
17 to whether or not --

18 THE COURT: Because you -- you had -- you
19 acknowledge they're entitled to discovery of the mesh
20 network and any other reasonably similar network?

21 MS. KOBIALKA: Right. And to the extent
22 that the CellReader has been somehow implemented within
23 the mesh network, those documents have been produced.

24 THE COURT: Okay.

25 MS. KOBIALKA: So if it was just CellReader

1 on its own, previously, we didn't -- we didn't provide
2 that. We didn't go out and specifically look for old
3 CellReader documentation, but to the extent it has
4 anything to do with the mesh network, we produced it.

5 THE COURT: All right.

6 MS. KOBIALKA: Do you have any further
7 questions, Your Honor?

8 THE COURT: No.

9 MS. KOBIALKA: Thank -- thank you for your
10 time.

11 MR. WALSH: Just very briefly, Your Honor.
12 From our standpoint, that -- that -- and I believe this
13 is reflected in the correspondence between the parties
14 that lead up -- led up to the motion, but much of what
15 you've just heard, this is the first time we've heard
16 it.

17 But -- and you don't have to take my word
18 for it. Interrogatory No. 3, we basically asked them
19 for a list of the products that they're willing to
20 produce information about. They gave us three products.
21 They've never -- to my knowledge, they've never
22 supplemented it. They said that we'll produce
23 information regarding the three products that are
24 specifically named. They haven't listed another
25 product. They haven't supplemented it, to our

1 knowledge, and -- and, again, Your Honor, that's part
2 of the problem. We -- we keep asking them, what are you
3 producing, what are you withholding, and they won't tell
4 us.

5 Just look at that December 28th letter.
6 The -- the author of the letter specifically wrote, I
7 haven't personally reviewed all the documents, so I
8 can't tell you what's being produced and what's not
9 being produced. So may -- maybe it's confusion. Maybe
10 we're just talking past each other, but -- but that's
11 why we've tried to ask them, what are you producing and
12 what aren't you producing?

13 But from what I understood from counsel's
14 representations, we have, I think, enough for a consent
15 order on just about everything, other than certain
16 CellReader aspects, which, again, we think we're
17 entitled to see that information. But -- but -- and --
18 and we think that's appropriate, but certainly
19 everything else -- my understanding is they're willing
20 to produce information and documents regarding all the
21 products that we've listed in there as it relates to the
22 SecureMesh Network. And if that's the case, then I
23 think we -- we're prepared to enter into a consent order
24 in that regard.

25 Finally, Your Honor --

1 THE COURT: Well, on the CellReader, I think
2 it's architecture, how is cellular just in general
3 covered by these claims?

4 MR. WALSH: The -- Your Honor, it's not --
5 what -- what the -- the '270 -- well, I should say the
6 '516 patent relates to a gateway device --

7 THE COURT: Right.

8 MR. WALSH: -- that's between two networks.
9 One --

10 THE COURT: Home network and then the
11 larger --

12 MR. WALSH: Well, one is a wireless mesh
13 network.

14 THE COURT: Wire, right.

15 MR. WALSH: It could be the meters. And
16 with respect to the mesh network where it's the meters
17 on one side, on the other side is a wide area network,
18 and -- and that's basically the back hall back to the
19 utility.

20 Now, my understanding -- and, again, we --
21 we haven't seen much in the way of CellReader, so I -- I
22 don't have a firm grasp as to exactly how it operates,
23 but my understanding is the CellReader can be used to
24 transfer some of that information that's collected to
25 the mesh network to get back to the utility or -- or

1 otherwise. So -- and -- and this is represented in
2 their marketing materials that the CellReader product
3 is -- can be used in connection with the SecureMesh
4 Network.

5 And so, again, I think we're entitled to at
6 least -- to Mrs. Kobialka's point, we don't want any
7 more information than we need. We certainly don't want
8 terabytes of information we don't know need, but that's
9 why we've asked them, what -- what are you going to
10 produce and what are you going to withhold and -- and --
11 to try to work that out, but thus far -- and, again, I
12 think the correspondence reflects this. They've been
13 very steadfast in exactly what they'll produce and what
14 they won't.

15 So -- and -- and -- and I think that's all I
16 have, Your Honor, unless you have any questions.

17 THE COURT: Well, would the representations
18 about source code, are you in a position to go and look
19 at the source code?

20 MR. WALSH: Your Honor, if -- I mean, again,
21 it's -- it's hard to make that determination in the
22 dark because I -- I -- I don't know exactly what source
23 code -- to my knowledge, and I could be wrong, and --
24 and Ms. Kobialka and I weren't -- she was not involved
25 in a number of the discussions that I had with -- with

1 counsel for Trilliant on these issues.

2 I don't recall any explanation as to exactly
3 what source code they were going to make available. We
4 understood it was only going to relate to the three
5 products that we had identified. If -- if there
6 are certain --

7 THE COURT: I just understood it was going
8 to relate to any product that was manufactured by her
9 client that operates on this mesh network and the
10 network itself.

11 MR. WALSH: And -- and I think that's --
12 that's -- that would be sufficient, I believe.

13 Now, if there's other source code -- it's --
14 it's hard to tell, Your Honor, for instance, with --
15 with the -- these patents. The patents don't just cover
16 elements in the network. It also covers the routing of
17 information within the network. A lot of times that's
18 covered by source code.

19 THE COURT: Well, that's what -- I mean,
20 your contentions, for example, don't spell out the
21 instructions for analyzing a data packet to determine if
22 the data packet has been sent to a new optimal route and
23 things like that. If you had the source code, then you
24 could supplement your infringement contentions which, I
25 think, is her argument on her cross motion.

1 MR. WALSH: And -- and I -- and I believe
2 that's correct, Your Honor. That -- I think that
3 information regarding exactly how the routing operates
4 is going to be in the source code, but my -- my point,
5 though, Your Honor, is -- or it very well could be.
6 That source code, we don't know without looking at the
7 source code whether it's -- it's the source code in the
8 gateway or whether it's in the client or whether it's
9 back in the back hall of the utility somewhere that
10 actually influences those routing -- those routing
11 protocols.

12 So it's difficult for us to say in a vacuum
13 whether it's -- it's just the source code for the mesh
14 network or whether there may be other elements of -- of
15 the source code back at the utility that may influence
16 the routing -- routing protocols.

17 So, again, we -- we believe we're entitled
18 to any of the source code as it relates to the -- the
19 routing of information within the networks.

20 THE COURT: Okay. All right.

21 MR. WALSH: Thank you, Your Honor.

22 MS. KOBIALKA: Your Honor, may I address --

23 THE COURT: Well, you've got a cross motion,
24 so very briefly. I ordinarily don't allow sur-rebuttal,
25 so you're -- you're getting away with something simply

1 because you have a cross motion.

2 MS. KOBIALKA: I -- I will be very, very
3 brief.

4 As far as he pointed out, Interrogatory No.
5 1, that we identified three prod -- products, those
6 responses to interrogatories were occurring at the time
7 that we were having our meet and confer discussions
8 about what the accused products actually were. And
9 subsequently, we've informed them that we've produced
10 everything that's reasonably related.

11 And, once again, it's -- it's in the
12 correspondence. I mean, I read for you a quote that we
13 put in our December 28th letter, trying to be as clear
14 about what we were producing and what not, so, you know,
15 what -- what they're suggesting with respect to how
16 we've addressed discovery is just -- just not
17 appropriate.

18 As far as our document production, they --
19 they have the technical information source code, as well
20 as very specific engineering specifications that provide
21 all of the information and details that would fill in
22 whatever blanks that they may have with respect to
23 routing protocols. And they've had it for months and
24 months and months.

25 In fact, I believe that was part of our

1 original production that occurred back in September, so
2 there is no reason why they cannot provide us with some
3 specificity about the limitations in the claims, whether
4 it's in the infringement contentions or in the
5 interrogatory. We just want to get an understanding of
6 which aspects they're accusing of infringement because
7 once again, that affects a lot of different issues, as
8 well as the invalidity issues that are ongoing in this
9 particular case.

10 And as far as our document production goes,
11 we've provided them with a product list. I mean, they
12 have our best information about all the products that we
13 sell. And if there's something that we missed for some
14 reason when we did our word searching, just tell us.
15 We're more than happy to go ahead and provide that, and
16 I'm happy make that -- continue to make that
17 representation, as I have throughout in the case.

18 But we would really like them to identify
19 what the infringement bases are with more specificity
20 and specifically now that they have all of our product
21 information, with regard to which specific products, and
22 they can, you know, point to our own documentation for
23 that.

24 THE COURT: Okay. Well, the -- I mean, my
25 order is going to require you to make available all of

1 the source code for products that your client
2 manufactures that operate on the mesh network, as well
3 as the mesh -- any component that operates on the mesh
4 network to which you've got access to the source code.

5 And with respect to -- I'm going to order
6 the production of the CVs of people who've contributed
7 to the development of the network.

8 I'm also -- I'm going -- I'll carry the
9 cellular item, and I'll get you an order on that. But,
10 you know, insofar as there's any other technical
11 documents that you're holding back for some reason with
12 respect -- I mean, the scope of production is going to
13 be the same with respect to technical documents as it is
14 for source code. It's going to be technical documents
15 related to any product that operates on the mesh
16 network, and -- and it's going to extend to networks
17 that are reasonably similar to the mesh networks.

18 Now, I don't know whether it's called
19 SecureMesh or -- or something else, but if it's -- if
20 it's reasonably similar to that, that's going to be
21 the -- the -- included in the order. So I'll -- you
22 know, I don't know -- I don't know how -- how much more
23 specific I can make it than that at this point, but I'll
24 make the decision on the cellu -- the CellReader item,
25 and if that's in, it's in. If it's not in, then it's

1 not in.

2 MS. KOBIALKA: And, Your Honor, to be clear,
3 we have given whatever is reasonably similar. There --
4 there's only the mesh network and then the cellular
5 technology and so we --

6 THE COURT: Well, then -- then you'll have
7 no problem complying with my order.

8 MS. KOBIALKA: We think we -- we have
9 already.

10 THE COURT: Okay.

11 MS. KOBIALKA: So, I mean, I want to be
12 clear. We really do think we -- we've already done all
13 of this already. So whether it's miscommunication or
14 otherwise, that's fine, Your Honor.

15 THE COURT: Well --

16 MR. WALSH: Could I -- just one point of
17 clarification. Again, their interrogatory responses
18 only refer to three products. So I just --

19 THE COURT: Well --

20 MR. WALSH: -- and we've asked --

21 THE COURT: -- I'm -- I'm assuming, based on
22 what she's told me, that's their only three products. I
23 mean, and if it turns out that's not correct, then I
24 mean --

25 MR. WALSH: Well, we know that's not

1 correct.

2 THE COURT: Well, then, I've been told
3 something that's incorrect. I mean, I -- I don't mean
4 to --

5 MR. WALSH: And that's -- Your Honor, I --
6 just to be clear, and I'm not -- I'm not saying anybody
7 said anything that's not accurate. My point is simply
8 the -- the interrogatory --

9 THE COURT: I mean, I'm not limiting the
10 scope of discovery to products that are specifically
11 identified by brand name.

12 MR. WALSH: Okay. And our -- our motion
13 requested the compelling -- the production of documents
14 and interrogatory responses --

15 THE COURT: Well --

16 MR. WALSH: -- consistent with the -- the
17 proper scope of discovery, and -- and so -- and, again,
18 currently their Interrogatory No. 3 where we've asked
19 them to identify all these products so we know exactly
20 what we're talking about only refers to three products.
21 And it also generally refers to 33(d) without
22 identifying the documents, so --

23 THE COURT: I'll -- I'll add something about
24 interrogatories.

25 MR. WALSH: Thank you.

1 THE COURT: But I'm more concerned with the
2 documents and the source code issue than the
3 interrogatory, but I'll -- you know, if -- if she wants
4 to compile a list and attach it -- or if she has a list
5 and she can identify it with specificity under Rule
6 33(d), I'll allow her to do that, as opposed to
7 regurgitating the list into an interrogatory response.

8 MR. WALSH: Sure.

9 THE COURT: Okay. But it needs to be, you
10 know, plain from anyone reading the interrogatory,
11 exactly what list you're referring to, okay?

12 MS. KOBIALKA: Right. And I -- I just
13 wanted to be clear. All I represented was we were still
14 in the meet and confer process about what was at issue
15 at the time those things were responded to, but
16 subsequently have explained what our position is in the
17 33(d) response that was intended to identify a product
18 list, which we'll go ahead and do.

19 THE COURT: All right.

20 MS. KOBIALKA: That's not a problem.

21 THE COURT: All right. I'll set you a
22 status conference for June the 30th at 10:30. We'll see
23 where we are.

24 When can you get out there to see the source
25 code? Can you do it within 30 days?

1 MR. WALSH: I'd set -- 45 days. We've got
2 to get -- we've got to coordinate with our expert who's
3 in New York, and I -- I presume the source code will be
4 in the California, at their offices in California, so --

5 THE COURT: All right. You need to -- you
6 to need to make it all available within 45 days. You
7 need to go look at it, and then you need to supplement
8 your -- your contentions before the hearing on the 30th,
9 and we'll see where we are --

10 MR. WALSH: Okay.

11 THE COURT: -- at that time, and if there's
12 any more discovery problems, I'll take care of them on
13 the 30th, okay?

14 MS. KOBIALKA: Your Honor, if I may, I am in
15 trial on that date, but hopefully I can find someone who
16 can do it. I just want you to be aware --

17 THE COURT: I'm sure you're not going to
18 have any problems.

19 MS. KOBIALKA: Correct.

20 THE COURT: Okay?

21 MS. KOBIALKA: I agree.

22 THE COURT: Then you can send Mr. Gardner
23 over here with Mr. Ward and y'all can announce that
24 y'all have resolved your discovery problems, but I --
25 you know, that's -- I'm going to -- if you're in trial

1 and there's a problem, you need to send somebody, okay,
2 that's familiar with the case and what all you've told
3 me today, okay?

4 MS. KOBIALKA: Absolutely. Thank you, Your
5 Honor.

6 THE COURT: All right. Thank you.

7 LAW CLERK: All rise.

8 MR. WALSH: Thank you, Your Honor.

9 (Hearing concluded.)

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1 CERTIFICATION

2

3 I HEREBY CERTIFY that the foregoing is a
4 true and correct transcript from the stenographic notes
5 of the proceedings in the above-entitled matter to the
6 best of my ability.

7

8

9

SHELLY HOLMES	Date
Deputy Official Reporter	
State of Texas No.: 7804	
Expiration Date: 12/31/10	

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